

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 839 of 1998

AND

SPECIAL CIVIL APPLICATION NO. 842 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 No.

SUBHASHSING BHAGWATISING THAKOR

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for the Petitioners in both the petitions.

MR HL JANI, AGP, for the Respondents in both the petitions.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 28/07/98

ORAL COMMON JUDGEMENT

Both the petitioners, who are detained by orders dated 17-1-98 passed by the Police Commissioner, Ahmedabad City, under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (

hereinafter referred to as "the PASA Act"), have filed these petitions under Article 226 of the Constitution of India challenging the legality and validity of the orders of detention.

As the grounds of detention supplied to both the petitioners are common, except that one more Criminal Case No.170 for the offence under section 379 of the IPC has been registered against the petitioner of SCA No. 839/98, both these petitions are heard together and disposed of by this common judgment.

Both the petitioners are accused in Criminal Case No. 650/97 for offences punishable under sections 394, 324, 506(2), 114 of the IPC and Section 135(1) of the Bombay Police Act; in Criminal case No.3003/98 for offence under Section 25(1) of the Arms Act and Criminal Case No.3004/98 also for offence under Section 25(1) of the Arms Act. All these cases are at the investigation stage. Besides these cases, there are unregistered offences disclosed by four witnesses whose identity has not been disclosed to the petitioners by the detaining authority claiming privilege of public interest conferred under Section 9(2) of the Act, wherein it is alleged that the concerned witnesses were beaten when they refused to accede to the request made by the petitioners to part with money. On both the occasions, the petitioners and their associates illegally extorted Rs.1300 and Rs.700 respectively from the pockets of the witnesses. Both the incidents were watched by number of people. However, the crowd started running helter skelter when the petitioners rushed towards the crowd with deadly weapons and the atmosphere of fear and terror was created and the even tempo of the life was disturbed.

On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioners are dangerous persons within the meaning of Section 2(c) of the PASA Act and with a view to preventing them from acting in any manner prejudicial to the maintenance of public order, passed the impugned orders of detention against the petitioners, which have been challenged by the petitioners by way of these petitions.

These petitions are required to be allowed on the ground that assuming for the sake of arguments that the allegations made against the petitioners are true, the same at best can be treated as breaches of law and order and not public order. I have gone through the statements of the witnesses which are stereo-type. Reading the

same, it clearly establishes without any manner of doubt that the statements are quite general and vague in nature and the alleged incidents are against individuals and the general public is not concerned at all and, therefore, it cannot be contended that the petitioners are involved in committing breaches of public order. Even if the allegations made are believed to be true, the same at best can be termed as breach of law and order and in no circumstances the same can be termed as breach of public order. Consequently, therefore, the satisfaction arrived at by the detaining authority that the petitioners are dangerous persons is also vitiated. The orders of detention are therefore liable to be quashed and set aside.

In the result, these petitions are allowed. The orders of detention dated 17-1-98 in both these petitions are quashed and set aside. The detenus Subhashsing Bhagwatsinh Thakor of SCA No.839/98 and Bablusing Samarjitsing Rajput of SCA 842/98 are ordered to be released forthwith if not required in connection with any other offence. Rule in each of these two petitions is made absolute accordingly with no order as to costs.

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